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Supreme Court of the United States

~~October Term, 1924~~
~~No. 199~~

October Term, 1925
No. ~~136~~ 350/0

Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft (Also Known as Hamburg American Line), Appellant,

vs.

The United States

APPEAL FROM THE COURT OF CLAIMS

APPELLANT'S MEMORANDUM.

WILLIAM B. DEVOE,
Attorney for Appellant.

... in the United States by B. H. Tyrrel, Printer, 206 Fulton Street, New York.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 488

OCTOBER TERM, 1925.

No. 116

HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT (ALSO KNOWN AS HAMBURG AMERICAN LINE), APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS.

Foreword.

This case is identical in principle with the case of *North German Lloyd* vs. *United States*, which is now pending before this Court as No. 113 of the October, 1925 Term. In the Court below the North German Lloyd and the appellant in the case at bar submitted a joint brief, and both cases were argued on behalf of the respective claimants by the same counsel. For these reasons the appellant in the instant case desires, by agreement of counsel and with the permission of this Court, to submit on the brief filed in this Court by the North German Lloyd in Case No. 113 above referred to. The following memorandum therefore comprises only those allegations which are necessary to set the facts of the

present case before this Court and to show that it has jurisdiction thereof.

OPINION OF COURT BELOW.

The decision of the Court of Claims was embodied in a memorandum accompanying the judgment entered March 17, 1924, dismissing claimant's petition and sustaining defendant's demurrer thereto (R. 6). In this memorandum the Court stated that it had no jurisdiction for the reasons given in its opinion in the case of *Deutsch-Australische Dampfschiffs-Gesellschaft* vs. *United States*, decided simultaneously with the present case (R. 6). Neither this opinion nor the memorandum have been officially reported, but they are set forth at pages 6 to 13 of the Record herein.

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

The judgment to be reviewed was entered March 17, 1924 (R. 6). The action of the Court below in dismissing the petition of the appellant (claimant below), sustaining defendant's demurrer thereto and ruling that it had no jurisdiction (R. 6) are relied on as the basis of this Court's jurisdiction. This jurisdiction is invoked pursuant to Sections 242 and 243 of the Judicial Code as the same existed prior to the changes effected by the Act of Congress of February 13, 1925. An appeal to this Court was applied for on June 10, 1924 (R. 13) and allowed by the Court of Claims on June 16, 1924 (R. 13). The record on appeal was filed on June 27th, 1924 (R. 14). The appeal was therefore pending in this Court when the Act of February 13, 1925 went into effect, and by Section 14 of that Act appellant's right to invoke the jurisdiction of this Court was not affected by said Act. Numerous cases might be referred to sustaining such jurisdiction, as it existed prior to the Act of February 13, 1925, to hear

cases like the one at bar. One of the most recent and typical of these is the case of *A. W. Duckett & Company* vs. *United States,* 45 Supreme Court Reporter 38. In that case the Court of Claims dismissed claimant's petition for want of jurisdiction, on the ground that no contract could be implied on the part of the United States to compensate claimant (58 Court Claims, 234, 403). An appeal to this Court was sought and allowed, and this Court reversed the judgment, with directions to the Court of Claims to award proper compensation to the appellant. That case is thus closely analogous to the case at bar, and involves the same mode of procedure resorted to here.

STATEMENT OF THE CASE.

This action was brought in the Court of Claims by the appellant (claimant below) to recover from the United States the sum of $139,404.90 representing the aggregate value of various items of personal property belonging to the appellant, which property was taken into the possession and ownership of the United States at various dates between April 17, 1917 and June 24, 1918. The action was commenced by the filing of appellant's petition on April 5, 1923 (R. 1). On February 19, 1924 by leave of Court, appellant filed an amended petition (R. 1). This amended petition alleges substantially as follows:

1. That appellant is a German corporation and citizen and for many years up to and including July 1914 operated steamship services in various parts of the world (R. 1).

2. That in August 1914 these services were discontinued because of the outbreak of the European War; that on April 6, 1917 and at all times thereafter until possession of the said property was taken by the United States, appellant was the owner and in possession of cer-

tain personal property used in connection with its steamship business and then located on certain piers in Hoboken, New Jersey and in the Boroughs of Manhattan and Brooklyn, New York City (R. 1, 2); that at various dates between April 17, 1917 and June 24, 1918 said property was expropriated by the United States acting through the War Department under the authority of the Act of Congress of August 29, 1916, Chap. 418, Sec. 1 (39 Stat. 645) (R. 2).

3. That an inventory of said property was made in March 1918 on behalf of the United States which inventory was filed with the War Department, the Navy Department and the Alien Property Custodian; and that appellant claims all of the property listed in said inventory with the exception of certain floating craft and other items which are specified in appellant's petition (R. 2).

4. That the reasonable aggregate value of the property expropriated by the United States was $139,404.90 (R. 3).

5. That a certain memorandum or minute relating to this property was, on or about June 24, 1918, drawn up by representatives of the United States and of the appellant which memorandum reads as follows (R. 3, 4):

"At a meeting held at the Office of the New York Trust Company, at No. 26 Broad Street, New York City, on June 24th at 3:30 p. m. at which were present: Messrs. W. G. Sickel, Julius P. Meyer and Capt. F. Jarka, representing the Hamburg-American Line; Messrs. Otto T. Bannard, Morgan M. Mann and Gilbert S. McClintock representing the Alien Property Custodian; and Col. A. C. Blunt, Col. F. H. Schoeffel and Paymaster J. Lyman Pratt representing the joint Board of the War and Navy Departments, respectively, and Capt. Lawson Sandford also representing the War Department, there was submitted an inventory, with explanatory notes, consisting

of nineteen pages, showing the movable property including several items on pages eighteen and nineteen, namely: H. A. L. No. 2 Tug Boat, H. A. L. No. 3 Tug Boat, H. A. L. No. 4 Launch, a coal Hoister and three scows belonging to the Hamburg-American Line that had been taken over by the War Department since April 17, 1917, and for which the War Department is responsible.

"This inventory was marked for identification by the signatures of Messrs. Sickel and Meyer of the Hamburg-American Line, Otto T. Bannard for the Alien Property Custodian and Col. Blunt for the Joint Board.

"Capt. Sanford stated that the question as to whether the property was enemy property had been discussed and that the representatives of the Hamburg-American Line had stated that while the original inventory was as of the Hamburg-American Line Terminal and Navigation Co., the property was actually purchased and acquired by the Hamburg-American Line and, therefore, is alien enemy property.

"At the conclusion of the meeting it was agreed that if the Advisory Board subsequently reports favorably to that effect and such report is approved by the War Department, this inventory would be accepted as a list of all the movable property of the Hamburg-American Line in the hands of and chargeable to the War Department at its Hoboken Piers since April 17th, 1917.

(Signed) Otto T. Bannard, for Alien Property Custodian. A. C. Blunt, Lt. Col., U. S. A. W. G. Sickel, for Hamburg-American Line. O. T. B.

"Note.—While the minute provides that the execution of the official documents of record shall be contingent upon the approval, by the Departments concerned, of the recommendations of the Joint Army and Navy Board, it is now mutually agreed that the execution be

accomplished forthwith, if only because of the difficulty of securing the presence of the numerous individuals involved.

"This proceeding in no way alters the status of the parties to the agreement, but serves only to expedite the prompt settlement of the matters involved.

(signed) J. Lyman Pratt, (title illegible)."

6. Appellant's petition sets forth the jurisdictional allegations that its suit is founded on the Constitution, the Act of Congress of August 29, 1916 above referred to, an implied contract with the Government to make compensation, a claim not sounding in tort for unliquidated damages, and an express contract with the Government to pay the reasonable value of said property as evidenced by the memorandum signed by the representatives of the Government above set forth (R. 4). It is further alleged that no compensation has been awarded or paid to appellant (R. 4); that no action has been taken on the claim in Congress nor any request made for such action (R. 4); that appellant is the sole owner of the claim, has made no assignment thereof, is justly entitled to the amount claimed, has no other suit pending based on such claim and has not aided or abetted rebellion against the United States (R. 5). It is also alleged that Germany accords to American citizens reciprocal rights to sue in her courts (R. 1) and that the suit was commenced within six years after the claim accrued (R. 5).

On May 26, 1923, the Government demurred to appellant's petition on the ground that it did not state a cause of action against the United States (R. 5). This demurrer was allowed to stand to the amended petition (R. 5).

On February 18, 19 and 20, 1924, the demurrers in this case and several other cases involving similar ques-

tions were argued and submitted (R. 6), and on March 17, 1924, the Court of Claims rendered judgment sustaining said demurrer and dismissing appellant's petition (R. 6). In an accompanying memorandum that Court stated that it had not jurisdiction, for the reasons set forth in an opinion rendered on the same date in the case of *Deutsch-Australische Dampfschiffs-Gesellschaft* vs. *U. S.* (R. 6). This opinion is printed in full on pages 6 to 13 of the record herein.

Carl L. Schurz, theretofore attorney for the appellant, died May 19, 1924. On June 7, 1924, William B. Devoe, appellant's present attorney, was on motion substituted for Mr. Schurz as appellant's attorney of record (R. 13).

An appeal from the judgment of the Court below was applied for on June 10, 1924 (R. 13) and the appeal was allowed on June 16, 1924 (R. 13). The printed record was filed in this Court on June 27, 1924 (R. 14).

ARGUMENT.

(As stated at the beginning of this memorandum, appellant asks leave to submit on the brief filed in this Court by the North German Lloyd, Appellant, in Case No. 113 of the October, 1925 Term, entitled *North German Lloyd* vs. *United States.*)

Respectfully submitted,

WILLIAM B. DEVOE,
Attorney for Appellant.

15 Park Row,
New York,
October 10, 1925.